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The International Trademark Question

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THE war which has come to a close has created such high labor costs in Europe, that now more than ever before, industrial conditions there closely approximate those existing in the United States. As a result, it may safely be said that the world now enters into the era of quantity production. However much one may regret the fast-disappearing craftsmanship of the individual non-specialized worker, the greater satisfaction which came to the craftsman from the love of his handiwork, it seems plain that from now on the craftsman is passing out of existence, and the world-industry of the future must develop along American lines, that is, on the basis of the production of standardized articles upon a large scale, thus allowing the economic law of division of labor to come into play and to result in the cheapening of the product. This transition from an industrial world based on craftsmanship into the modern highly-standardized factory system has, of course, though accelerated in Europe by the war, been of long duration.

Early industrial craftsmen, as well as the artists, were in the habit of marking their handicraft with their names or with some insignia which would identify their product and serve as a means to denote the origin of the articles-made by them. Practically all the ceramics of ancient Rome and the silverware of the Middle Ages were inscribed with the name of the individual craftsman whose handiwork it represented. This practice of making goods with a distinctive trademark has come down to us through the ages, and represents the realization of the desire on the part of the honest craftsman in all stages of the world's history, to be known by his good handiwork, creating what is termed in modern parlance "goodwill" on the part of his public. With the growth of the factory system, the development of international trade, and in particular the development of international advertising, the question of marking goods to denote their origin has become one of far greater importance than ever before.

In the early period of development of modern industry, the number of goods sold under a distinctive trademark was relatively small, and the market itself restricted. Today a single trademark very often serves to identify millions of dollars' worth of goods sold in every part of the earth to all kinds and conditions of people. Thus the modern international trademark must not only be a mark which is suited to the needs of the markets of the country in which the goods originate, but it must, in order to be a valuable means of identification, be distinctive in all kinds of markets. There has thus grown up a requirement for the use, in modern industries, of a special kind of trademark, which may be called an international trademark. Experience has shown that very few of our leading American manufacturers have appreciated the necessity for giving attention to this aspect of international trademarks, since they adopt the same method which was used by the early Roman and the mediaeval craftsman. They use merely their names to identify their product, failing to remember that there are persons with the same names in most of the Anglo-Saxon parts of the world, and that these names themselves, printed in Roman characters, are unintelligible to almost half the world.

SELECTING AN INTERNATIONAL TRADEMARK

In the selection of an international trademark, there must be brought to bear a knowledge of the psychology not merely of a nation but of all nations. The best international trademark is that which has the most universal appeal in the widest sense of the word. A picture is usually an excellent international mark as it has a meaning not only for the educated public but also for the uneducated. If the mark is a picture of an object which is known equally to the educated and to the illiterate, it will be especially suitable. Perhaps the best example of such a mark is the picture of an animal or a bird, such as the picture of a lion, a tiger or an eagle. Such marks are of universal interest, and cannot fail to be distinctive, no matter what the country may be in which the mark is used. On the other hand, invented words, words in the English language, proper names, signatures, etc., all of which are favorite marks with American manufacturers, cannot be recommended as international trademarks. Where a

manufacturer has already adopted a trademark which is unsuited for foreign trade and has spent a great deal of money in advertising it in this country and abroad, it is of course practically an impossible matter, and also an unbusinesslike matter, to change the trademark. In such a case, the representation of some animal or bird, which will be distinctive in the foreign market, should be combined with the other mark, and the dual mark will be sufficiently distinctive for international purposes.

A very good example of such use, is the Borden "Eagle" trademark, which is used on all products made by Messrs. Borden & Company throughout the world, and is probably a more valuable trademark in the Far East than the name "Borden," which means nothing to the illiterate.

NATIONAL TRADEMARKS

Another aspect of the trademark situation which has not been dealt with by publicists is the question of using trademarks in order to give the goods the appearance of a national origin different from the real origin. Thus, it was a common practice for a German concern, prior to the war, to use trademarks which would indicate that the goods made by it were of British or American origin, because of the greater national reputation of those countries. Great Britain attempted to stop this practice, so far as the British markets were concerned, by means of its Merchandise Marks Act, under which the customs authorities were empowered to stop any shipment into Great Britain of German goods which did not bear upon them the words "Made in Germany." Contrary to what has sometimes been thought to be the case, this did not have the effect of making the mark "Made in Germany" a mark of quality. On the contrary, the words "Made in Germany" became a derogatory mark, since the majority of German-made goods did not have the same durability as English-made goods of the same grade, and as a result, even the better-made German articles came under this ban of popular disfavor in Great Britain; so that the expression "Made in Germany" was, even before the war, a term of contempt among the more reliable traders.

There has been considerable agitation in this country for the compulsory use of a national United States trademark, which is

to be registered in the trademark offices all over the world, and is to be used by our manufacturers to indicate that their goods are of American origin. This proposal has found disfavor on the ground that the poorer grade of American goods marked in this way may create a bad impression for American goods as a whole, so that more would be lost than would be gained as a result of a national trademark. Another danger arising from the use of the mark "Made in U. S. A." as a general proposition, is the possibility of manufacturers in other countries similarly marking their goods "Made in U. S. A." and shipping them to the various foreign markets, such as the South-American countries, where they would be passed off as American goods. There would be very little possibility of preventing such false marking except by special treaties. It is not the usual custom for our manufacturers to mark their goods "Made in U. S. A.," and it is the writer's opinion that they should not rely upon such marking, but should always use a good international trademark, protected by registration in the various foreign countries.

IMPROPER REGISTRATION OF TRADEMARKS

There has been considerable activity in the improper registration of trademarks by importing agencies in the various foreign countries, these agencies registering the well-known trademarks of American concerns, and using the ownership of the mark thus acquired, as a means of holding the agency of these concerns. This abuse has been generally due to negligence on the part of the American manufacturer. It cannot be said adequate warning of the situation has not been given in the past few years, as our Department of Commerce and agencies throughout the country have made this situation abundantly clear to the American manufacturer and exporter.

THE TRADEMARK AS AN ECONOMIC WEAPON

Prior to the war, a number of American trademarks were registered through America by concerns who were often suspected of being the agents of German concerns. Only recently, the writer came across the registration of the well-known American trademark "Bakelite" in the Argentine by the German exporting house of Hecht, Pfeiffer & Co. This unfair registration of trade-

marks can very readily become an economic weapon if it is carried out systematically and advantage is taken of the lack of interest which has so often been shown by American exporters.

A number of attempts have been made to bring about the international protection of trademarks, but these attempts cannot be regarded as entirely successful. This is due to the fact that the registration of a trademark is a domestic affair, and the protection afforded can extend only within the territory of the country, and subject to the conditions which exist in that territory. For instance, the country granting trademark protection cannot possibly concern itself with the question of whether that trademark protection will interfere with trademark protection granted by another country to another manufacturing concern doing business in that other country. In view of the fact that only a relatively few trademarks are in use internationally, while the majority of trademarks are used in domestic commerce and are not employed in international trade, it is practically impossible for any country to have a trademark system which is adequate both for domestic trademarks and for international trademarks. Thus, in the United States, our trademark laws are perfectly adequate for a trademark used in this country, but cannot give an English concern, which has built up a great business under a trademark in Europe, an opportunity of protecting the trademark here when the goods are not sold in this country, and when an American manufacturer has been using the mark here in all good faith.

INTERNATIONAL REGISTRATION

As a result of this condition, conflicts of interest are inevitable. The attempts made to remove these conditions by international registration at Berne, Switzerland, and more recently by the establishment of the Pan-American Union Trademarks Office, only seem to emphasize the difficulties which are encountered. Under these unions the registration of an international mark in the international office covers not one country, but a number of countries. As a result, any person who wrongfully registers a trademark in the international office is thereby enabled to accomplish more simply and more effectively a wrong in a number of countries and more trouble results from such international

registration systems than would exist without them. Thus, only recently, our attention has been drawn to the registration of a number of American trademarks by an Austrian in the International Trademarks Office of Berne, as the result of which he has secured trademark registration in a considerable number of countries at a very small cost to himself. In other words, international registration in a single office puts a premium upon piracy.

The writer is of opinion that the international trademark problem can be met only by an honest attempt to comply with the domestic requirements of the various foreign countries, and that where a conflict of interests arise, the later user of the mark must change his mark for that particular country rather than attempt to rely upon some form of international registration to protect him. Unification of the trademark laws of the world would not ameliorate the conditions. In the United States we already have a unified Federal Trademark law, which applies to all the states of the Union, and notwithstanding this fact, it often happens that a trademark which has been used in the eastern part of the United States comes into conflict with a trademark which has been used in the western part of the United States, though as much as twenty years may elapse before the trade expands to such a point that there is a conflict between the two traders.

The Supreme Court of the United States has held that under such circumstances, each party owns the trademark in the states in which he used it. This is what goes on, on a larger scale, in the international trademarks field. It would not be fair to permit any concern, merely by registering a trademark in an international trademark office, to cover the world completely by this single registration, thereby preventing others from using it in a field in which they are not using it themselves, and monopolizing some device which is capable of use without in any way hurting their business rights.

The trend in industry towards industrial combinations utilizing a single trademark may, in the end, result in a more uniform system of trademarks throughout the world, by reducing the number of marks used internationally. Combinations for export under the Webb-Pomerene Law result in the distribution and sale of goods made by a great number of American manufacturers

under a single trademark in the various foreign countries. Such trademarks will become extremely well known internationally, and may well form a class of international marks which could be registered in an international office for all classes of goods. Meanwhile, the American exporter who is developing a business in foreign markets must not neglect to register his trademarks in the countries in which he is doing business.

NO INTERNATIONAL COURT FOR UNFAIR INTERNATIONAL TRADE

The amount of unfair competition which goes on between individuals in a nation can readily be ascertained by reference to our court records. Nothing is so common, in an era of competition, as for one trader to attempt to take advantage of another, and nothing is more attractive than to attempt to steal the good-will built up by a successful manufacturer. Human nature does not change beyond the boundaries of a nation. In international competition, the same conditions prevail exactly, with the disadvantage against the honest trader in that there are no international courts before which he can appear for justice in international trade. Under the circumstances, it behooves our government, if it is to secure fair conditions for American traders abroad, to busy itself with treaty arrangements with countries where it is often impossible for an American trader to register his trademark as for instance, Cuba, where an American trademark cannot be registered unless it has already been registered in the United States Patent Office. The International Patent Law Association, an organization made up of the leading international patent practitioners in this country, has recently been formed with a view to remedying international conditions in trademarks, as well as in patents, and it is one of the objects of this Association to conduct an active propaganda, directed to the desirability of arrangements which will remove those disabilities which prevent the registration of trademarks internationally; for instance, the fact that registration in one country is often dependent upon registration in another, and the conditions which prevent the real owner of the mark from recovering it from a person who has pirated it.

We are told that wars are brought about as a result of the desire of one nation to gain an economic advantage over another;

the ill-feeling which so often accompanies competition, is much aggravated by unfair trade tactics. The Japanese have been particularly active in simulating American trademarks in the Far East trade, and such activities are not conducive to good feeling between the nations. The piracy of international trademarks might well result in a breach in commercial confidence between a nation habitually attempting to copy American trademarks, and this country, so that those who are interested in international coöperation, and good-feeling between the nations, would do well not to overlook the importance of the subject of International Trademarks.